

Application No. 10/604,137

Docket No. A3-1641

Amendment dated November 8, 2004

Reply to NOTICE OF NON-COMPLIANT AMENDMENT dated October 8, 2004

REMARKS

As noted above, the "Notice of Non-compliant Amendment" dated October 8, 2004, alleged that Applicant's amendment filed on September 29, 2004, was non-compliant because in the "Amendments to the claims: Each claim has not been provided with the proper identifier" This response complies with the Examiner's requirement that an "Amendment to the Claims" section be submitted. However, in doing so, Applicant's undersigned representative believes that such a requirement was improper under the Code of Federal Regulations (CFR) and the Manual for Patent Examining Procedure (MPEP).

As noted above, in the "Amendments to the Claims" section presented herewith, claims 1-20 are all identified as being "original," as no claim amendments were presented in Applicant's amendment. According to the 37 CFR 1.121(c):

Claims. Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. (Emphasis added.)

Therefore, according to the CFR, because Applicant's amendment did not include any

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“change to an existing claim, cancellation of an existing claim or addition of a new claim,” Applicant was not required to provide “a complete listing of all claims ever presented.”

Similarly, MPEP 714II.A.(C) states:

The amendment papers should include . . .


(C) a section (must begin on a separate sheet) entitled “Amendments to the Claims” which includes a complete listing of all claims ever presented in the application (if there are any amendments to the claims). (Emphasis added.)

Therefore, the MPEP is in complete agreement with the CFR that Applicant was not required to provide “a section . . . entitled ‘Amendments to the Claims’ which includes a complete listing of all claims ever presented in the application,” because Applicant’s amendment did not include “any amendments to the claims.”

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Docket No. A3-1641
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Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

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